

Bill Jennings  
California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
Tel: 209-464-5067  
Fax: 209-464-1028  
E-mail: deltakeep@aol.com

Mike Jackson  
Law Office of Mike Jackson  
P.O. Box 207  
429 W. Main Street  
Quincy, CA 95971  
Tel: 530-283-1007  
Fax: 530-283-0712  
E-mail: mjatty@sbcglobal.net

VIA: Electronic Submission  
Hardcopy to Follow

Andrew Packard  
Law Office of Andrew Packard  
319 Pleasant Street  
Petaluma, CA 94952  
Tel: 707-763-7227  
Fax: 707-763-9227  
E-mail: andrew@packardlawoffices.com

For Petitioner California Sportfishing Protection Alliance

**BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

---

<b>In the Matter of Waste Discharge Requirements and</b>	)	
<b>Cease &amp; Desist Order For El Dorado Irrigation</b>	)	<b>PETITION FOR REVIEW</b>
<b>District, Deer Creek Wastewater Treatment Plant, El</b>	)	
<b>Dorado County, California Regional Water Quality</b>	)	
<b>Control Board – Central Valley Region Resolution</b>	)	
<b>No. R5-2007-0008, Rescinding Cease &amp; Desist Order</b>	)	
<b>No. R5-2002-0211 Amendment No. 1 (NPDES No.</b>	)	
<b>CA0078662) and Adopting Order No. R5-2002-0210</b>	)	
<b>Amendment No. 2.</b>	)	

---

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance (“CSPA” or “petitioner”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) in amending Waste Discharge Requirements (NPDES No. CA0078662) and rescinding Cease and Desist

Order No. R5-2002-0211 for El Dorado Irrigation District, Deer Creek Wastewater Treatment Plant on 25 January 2007. *See* Resolution R5-2007-0008, Order No. R5-2002-0210 (Amendment No. 2). The issues raised in this petition were raised in timely written comments and direct testimony.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, California 95204  
Attention: Bill Jennings, Executive Director

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Resolution R5-2007-0008 Rescinding Cease & Desist Order No. R5-2002-0211 Amendment No. 1 and Order No. R5-2002-0210 (Amendment No. 2), Waste Discharge Requirements (NPDES No. CA0078662) for El Dorado Irrigation District, Deer Creek Wastewater Treatment Plant. Copies of the orders adopted by the Regional Board at its 25 January 2007 Board meeting are attached hereto as Attachments A & B.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

25 January 2007

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

CSPA submitted a detailed comment letter on 2 January 2007. This letter, the following comments and powerpoint presentation presented during the 25 January 2007 public hearing set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. The specific reasons the adopted Orders are improper are:

**A. The Regional Board inappropriately adopted an amended Permit eliminating an existing Effluent Limitation for copper contrary to the established procedures for water effects ratios (WERs) and Federal regulations, 40 CFR § 122.44(d)(1)(ii).**

The procedures for establishing WERs, as specified in SIP, are for adjusting Effluent Limitations, not for determining whether a constituent presents a Reasonable Potential to exceed water quality standards. In the unmodified permit, the Regional

Board conducted a Reasonable potential showing copper presented a reasonable potential to exceed the CTR based water quality standard. Following proper procedures, the Regional Board could have adjusted the Effluent Limitation based on a proper WER analysis. Federal regulations, 40 CFR § 122.44(d)(1)(ii), state “when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, **the variability of the pollutant or pollutant parameter in the effluent**, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.” Emphasis added. Even if the WER adjustments were intended for reevaluation of the “reasonable potential” analysis, the Regional Board failed to consider the variability of copper in the wastewater effluent in accordance with 40 CFR § 122.44(d)(1)(ii). The amended permit has no limitation for copper and it is reasonable to assume based on effluent variability that the wastewater discharge still presents a reasonable potential to exceed even the adjusted copper objective. The permit must be remanded back to the Regional Board to include a protective Effluent Limitation for copper.

- B. The Regional Board adopted an amended Permit to include a site-specific water effects ration for copper and eliminate the Effluent Limitation for copper without complying with the requirements of the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)*, the *California Water Code (CWC) Section 13241*, *Federal Regulations 40 CFR 131.11*, or the *California Environmental Quality Act (CEQA)*.**

The Permit, Finding 20 d, includes a site-specific water effects ration for copper and eliminates the Effluent Limitation for copper in Table B-1. The SIP, Section 5.2, establishes requirements for development of Site-Specific Objectives. SIP Section 5.2 requires that the Regional Board shall, at a public meeting, consider initiating the development of a site-specific objective under specific listed conditions. The Regional Board did not hold a public hearing regarding the development of the site-specific objective contrary to the requirements of the SIP. The public has been excluded from the process of development of the proposed water quality objective.

SIP Section 5.2 further requires that: “In accordance with the State’s Porter-Cologne Water Quality Control Act (Division 7 of the Water Code), objectives must provide for the reasonable protection of beneficial uses based on consideration of the factors listed in Water Code Section 13241.” In proposing the site-specific water quality objective the proposed Permit does not contain an analysis of the factors listed in Water Code Section 13241. The proposed Permit fails to comply with the SIP requirements and CWC Section 13241.

Regional Board staff claims that the 2005 SIP revision, which allows WERs to be used in a permitting context, obviates the need to consider WC § 13241 factors (Porter-

Cologne). The State Board clarified that **WERs are site-specific objectives**, in its Response to Comments regarding the SIR revision, in stating “Discharger-specific” Water Effect Ratios (WERs) are permit-specific objectives that are developed for a single discharger (i.e. a specific discharge point regulated by a NPDES permit), as opposed to the development of Site-specific Objectives (SSOs) on a watershed basis where the WERs can be applied to several discharge points. The State Board then observed, “the SIP, as written, notes that all SSOs must be derived in accordance with the Porter Cologne. No changes are proposed to this provision of the SIP and **thus any discharger-specific WERs must be consistent with Porter Cologne.**”

SIP Section 5.2 requires that: “In accordance with Federal law (CWA) and regulations (40 CFR 131.11, revised as of July 1, 1997), the objectives must be based on sound scientific rationale and protect the designated beneficial uses of the receiving water.”

- As mentioned above the Regional Board failed to hold the required public hearing and consider the factors of CWC 13241 eliminating the process to evaluate whether sound scientific rationale was used in the process or whether the proposed objective is protective of the designated beneficial uses of the receiving water.
- The establishment of water quality objectives is subject to the requirements of CEQA. A thorough CEQA analysis is necessary to determine the water quality impacts of the proposed water quality objective and the impacts to surface water beneficial uses. Staff claims that the 2005 SIP revision obviates the need to comply with CEQA since NPDES permit are CEQA exempt. However, since the State Board made clear that discharger-specific WERs are water quality objectives, the Regional Board cannot establish water quality objectives absent a CEQA or CEQA equivalent process. We note that the El Dorado Irrigation District CEQA analysis failed to discuss WER’s and the Board has not reviewed EID’s CEQA analysis for consistency.

The proposed Permit fails to fulfill the requirements of the SIP and comply with the CWC, Federal Regulations and CEQA. The permit must not be adopted as currently proposed and must be revised, following a thorough CEQA analysis, to address the factors in CWC 13241, and to include an effluent limitation for copper.

**C. The Regional Board amended the NPDES Permit for the Deer Creek Wastewater Treatment Plant by removing an Effluent Limitation for copper without addressing Antibacksliding in accordance with Federal Regulation 40 CFR 122.44 (I).**

The previous NPDES permit contained an Effluent Limitation for copper. The Regional Board amended the permit to remove the Effluent Limitation for copper. The Regional Board failed to address Antibacksliding in accordance with Federal Regulation

40 CFR 122.44 (l). Regional Board NPDES staff incorrectly stated during the public hearing for consideration of the permit amendment that Antibacksliding did not need to be considered because the Discharger did not comply with the previous Effluent Limitation and therefore the quantity of copper did not increase. Antibacksliding is based on the permit Effluent Limitation not the quantity of copper discharged in violation of the Effluent Limitation.

The Amendment violates Antibacksliding provisions in the regulations. Nor, is there any mention of the word “backsliding,” despite the elimination of copper limits. In its Response to Comments in the 2005 SIP revision, the State Board bluntly stated, **“the revisions to the SIP do not change the need for complying with anti-degradation and/or anti-backsliding requirements,”** and that **“findings in the permit and Fact Sheet must address applicable requirements, i.e., antidegradation requirements.”** The permit has been significantly relaxed by removing the Effluent Limitation for copper and must be amended to address Antibacksliding in accordance with 40 CFR 122.44 (l).

**D. The Regional Board amended the NPDES Permit for the Deer Creek Wastewater Treatment Plant by removing an Effluent Limitation for copper without addressing Antidegradation in accordance with the Clean Water Act, Federal Regulation and State Board Resolution 68-16.**

Section 101(a) of the Clean Water Act, the basis for the antidegradation policy, states that the objective of the Act is to “restore and maintain the chemical, biological and physical integrity of the nation’s waters.” Section 303(d)(4) of the Act carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations describe the federal antidegradation policy and dictate that states must adopt both a policy at least as stringent as the federal policy as well as implementing procedures. (40 CFR § 131.12(a).) California’s antidegradation policy is composed of both the federal antidegradation policy and the State Board’s Resolution 68-16.

The permit was amended to remove and Effluent Limitation for copper. The removal of the copper Effluent Limitation clearly allows an increase in the permitted mass of copper that may be discharged from the wastewater treatment plant. The Amendment does not change or further analyze the two-sentence conclusory statement concerning antidegradation contained in the Permit. In its Response to Comments in the 2005 SIP revision, the State Board bluntly stated, **“the revisions to the SIP do not change the need for complying with anti-degradation and/or anti-backsliding requirements,”** and that **“findings in the permit and Fact Sheet must address applicable requirements, i.e., antidegradation requirements.”** The permit has been significantly relaxed by removing the Effluent Limitation for copper and must be amended to address Antidegradation in accordance with the CWA, Federal Regulations and the Board’s Antidegradation Policy.

**5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.**

CSPA is a non-profit, environmental organization that has a direct interest in reducing pollution to the waters of the Central Valley. CSPA's members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries.

Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas.

CSPA's members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has actively promoted the protection of fisheries and water quality throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore declining aquatic resources.

CSPA member's health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

Vacate Resolution No. R5-2007-0008 and Order No. R5-2002-0210 Amendment No. 2 and remand to the Regional Board with instructions prepare and circulate a new tentative order that comports with regulatory requirements.

Petitioners, however, request that the State Board hold in abeyance further action on this Petition for up to two years or further notice by Petitioners, whichever comes first. Petitioners, along with other environmental groups, anticipate filing one or more additional petitions for review challenging decisions by the Regional Board concerning the issues raised in this Petition in the coming months. For economy of the State Board and all parties, Petitioners will request the State Board to consolidate these petitions and/or resolve the common issues presented by these petitions by action on a subset of the petitions. Accordingly, Petitioners urge that holding this Petition in abeyance for now is a sensible approach.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

CSPA's arguments and points of authority are adequately detailed in the above comments, our 22 October 2006 comment letter that was accepted into the record and our oral testimony presented to the Regional Board on 8 December 2006. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions.

The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114.

A true and correct copy of this petition, without attachment, was sent to the Discharger in care of Ms. Anne Deister, General Manager, El Dorado Irrigation District, 2890 Mosquito Rd., Placerville, CA 95667.

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

CSPA presented the issues addressed in this petition to the Regional Board in live oral testimony at the 25 January 2007 hearing on the Order or in comments submitted to the Regional Board on 2 January 2007 that were accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Mike Jackson at 530-283-1007.

Dated: 25 February 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill Jennings", with a stylized, cursive script.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

Attachments:

- A. Resolution No. R5-2007-0008
- B. Order No. R5-2002-0210 Amendment No. 2